

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ALEX N. SILL COMPANY,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:16cv1007-MHT
)	(WO)
CARTER BROS. MFG. CO.,)	
INC.,)	
)	
Defendant.)	

OPINION

Plaintiff Alex N. Sill Company filed this lawsuit against defendant Carter Bros. Mfg. Co., Inc., bringing a state-law claim for breach of contract and seeking a declaratory judgment. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 (diversity). This lawsuit is now before the court on Sill Company's motion for default judgment. For the reasons below, the motion will be granted.

On January 10, 2017, Carter Bros. was served the summons and complaint by process server, and was served with a copy of the amended complaint by U.S. Mail on

January 13, 2017. More than 21 days have passed since Carter Bros. was served with the summons and complaint and with the amended complaint. Carter Bros. has not filed an answer or other responsive pleading within the time specified by Fed. R. Civ. P. 12(a)(1).

Sill Company applied for entry of default against Carter Bros. on February 15, 2017, and the clerk of court entered the requested default. Sill Company then filed the pending motion for default judgment.

In the motion, Sill Company requests a judgment (1) finding its contract with Carter Bros. to be valid and binding; (2) granting judgment in its favor and against Carter Bros. in the sum of \$ 250,939.04, plus costs; (3) finding it is entitled to the first \$ 250,939.04 of any distribution made to Carter Bros. in a pending liquidation proceeding, or to any amount of the \$ 250,939.04 that remains owing at the time of such distribution; and (4) for any other, further or different relief to which it may be entitled.

On February 22, the court ordered that the parties

show cause, if any there be, in writing by March 8 as to why the motion for default judgment should not be granted. In the order, the court informed Carter Bros. that if it failed to respond within the time allowed, the court would grant the relief requested in the motion. The deadline has come and gone without response.

Attached to the default-judgment motion is the signed contract between the parties, an invoice from Sill Company to Carter Bros., and the declaration of Michael Perlmutter, President and General Counsel for Sill Company, discussing the documents and other factual background. Perlmutter attested to the following facts:

- Sill Company entered into a contract with Carter Bros. in 2010 to assist in the appraisal and preparation of fire-loss insurance claims with Lumberman's Underwriting Alliance; the insurance claim stemmed from a fire at Carter Bros.'s manufacturing facility.

- Under the contract's terms, Carter Bros. was required to pay Sill Company for its work out of the "first dollars" it received from the insurance company on its fire-loss claim.
- Sill Company performed claims preparation and other services pursuant to the contract for a total amount of \$ 259,989.04 in costs and fees.
- In Carter Brothers Mfg. Co. v. Lumbermen's Underwriting Alliance, No. 2:11-cv-251 (M.D. Ala.), Carter Bros. won a jury verdict against Lumberman's on the fire-damage claim for \$ 13,653,415.00. Sill Company provided expert testimony in the trial.
- In 2012, Lumbermen's made payments under the policy totaling \$ 7,122,439.56 to a number of Carter Bros.'s lienholders.
- Carter Bros. paid Sill Company \$ 9,050.00. It has not disputed the amount of money it owes Sill Company under the contract.

- The total remaining amount due to Sill Company under the contract is \$ 250,939.04.

Sill Company also submitted with its motion a notice of the liquidation of Lumberman's, issued by the Circuit Court of Cole County, Missouri. The notice gives claimants until May 24, 2017, to submit proof of claims against Lumberman's. Sill Company wishes to submit a proof of claim for the amount Carter Bros. owes it in relation to the parties' contract.

As detailed in the factual background discussed above, Carter Bros. was served with both the summons and complaint; failed to respond to the complaint within the time allowed; and failed to respond to an order of this court to show cause as to why final judgment should not be entered against it. Furthermore, the court has examined the contract between the parties and the other evidence submitted, and finds that the contract is valid and binding and that Sill Company is entitled to be paid \$ 250,939.04 in accordance with the contract. Accordingly, this

court is of the opinion that Sill Company's motion for entry of default judgment should be granted.

An appropriate judgment will be entered.

DONE, this the 13th day of March, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE